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Why Is David Boies Bothering to Sue Alan Dershowitz?

Frankly, I thought I was done with my Dershowitz tour. Boy, was I wrong.

By **Vivia Chen** (https://www.law.com/americanlawyer/author/profile/Vivia-Chen/) | July 31, 2019 at 03:14 PM

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David Boies, left, and Alan Dershowitz.

I think I speak for many people when I say that I have Dershowitz fatigue.

Even my teenage daughter has had enough. When I told her I was working on another column involving the Harvard Law prof, she rolled her eyes and said, "Oh, no! Dershowitz again?"

Alan Dershowitz is ubiquitous. You can't turn on the TV without seeing him in the curious role of Trump defender. Now, with the Jeffrey Epstein case reigniting, Dershowitz is himself a news item, causing us to reexamine his role as the

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billionaire's lawyer and rehash the sexual abuse allegations he still faces (two of Epstein's sex trafficking victims claimed he had sex with them).

In defense, Dershowitz has spilled [details of his personal life](http://nymag.com/intelligencer/2019/07/alan-dershowitz-jeffrey-epstein-case.html) (<http://nymag.com/intelligencer/2019/07/alan-dershowitz-jeffrey-epstein-case.html>)—like his claim to a “perfect sex life” (to show that he had no reason to stray), his penchant for wearing underwear during massages (to show that he couldn't have engaged in sex with Epstein's victims), and his occasional skinny-dipping in the waters of Martha's Vineyard (not sure what that's supposed to show).

Now, everyone is delving into Dershowitz's psyche. The New Yorker just published an [exhaustive 35-page analysis/profile](https://www.newyorker.com/magazine/2019/08/05/alan-dershowitz-devils-advocate) (<https://www.newyorker.com/magazine/2019/08/05/alan-dershowitz-devils-advocate>) of the professor by Connie Bruck that entailed a year's worth of investigation. (Hey, most journalists are lucky to get 24 hours to report and write a story.)

So here I am, too—back in Dershland! But no worries—my focus is narrow.

Frankly, I thought I was done with my Dershowitz tour of duty. (I wrote a [bunch of stories](https://thecareerist.typepad.com/thecareerist/2016/04/alan-dershowitz-on-the-record.html) (<https://thecareerist.typepad.com/thecareerist/2016/04/alan-dershowitz-on-the-record.html>) about him, starting in 2015, when Epstein victim Virginia Roberts Giuffre alleged that he had sex with her.) After Dershowitz sued Giuffre's original lawyers for defamation, then settled, I thought the Epstein story and Dershowitz would both lose steam.

Boy, was I wrong.

So let me pick up where I left off in 2016: the brewing animosity between Dershowitz and David Boies. As I remember it, during one of our interviews, [Dershowitz took umbrage that Boies](https://www.law.com/almID/1202724439959/Boies-Takes-on-Dershowitz-in-Sex-Case/?mcode=1202615731542&curindex=0&/) (<https://www.law.com/almID/1202724439959/Boies-Takes-on-Dershowitz-in-Sex-Case/?mcode=1202615731542&curindex=0&/>), whom he regarded as a peer, would take on the representation of Giuffre, whom he deemed a liar.

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I always thought Boies was the cool cucumber next to the peppery Dershowitz. My sense was that Boies would ignore Dershowitz and wait for him to self-explode.

Well, Boies must be getting impatient. In April, Boies Schiller Flexner sued Dershowitz for defamation on behalf of Giuffre (he's called her a [serial liar, extortionist, prostitute](#)

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<https://www.newyorker.com/magazine/2019/08/05/alan-dershowitz-devils-advocate>)—to name a few epithets, according to The New Yorker and other outlets). One line in the complaint sums it up: “Mr. Dershowitz now has what he claims to have been looking for.”

Boies is essentially calling his bluff. “When we filed, Dershowitz said, ‘Oh, great, give me chance to prove my innocence,’” Boies told me during a lengthy phone call. “And now he’s doing everything to stop it,” citing Dershowitz’s motion to dismiss the case.

In an email response, Dershowitz wrote, “We’re not stalling. We have filed every document in a timely manner. I need to preserve my First Amendment rights to continue to truthfully assert my innocence. Hence my motion to dismiss. I want all the facts to come out. That’s why I have been aggressively seeking to unseal everything.”

That strikes me as a throw-everything-in-the-kitchen-sink type of response. Whatever.

I’m more intrigued by this question: What’s driving Boies to sue Dershowitz for defamation at this stage? As far back as I can remember, Dershowitz has been trashing Giuffre .

“He really gave us no choice,” explained Boies. “We avoided bringing this for more than four years. I would have been happy not to hear from Alan Dershowitz in this context again. But the problem is that he believes that if he quacks loudly enough and outrageously enough, people will focus on what he’s saying and not the underlying conduct.”

Sure, Dershowitz pushes people’s buttons, but isn’t Boies playing into his hands by giving him the limelight he seems to crave?

“No,” said Boies. “Because he was just as loud and accusatory before. He made statements in the past, and we didn’t sue him, then he made more outrageous statements. He publicly said that Virginia was guilty of extortion and perjury and challenged her to sue for defamation.” He added, “He’s desperate to detract attention from the underlying accusation. People who have good defenses present those defenses. Those who don’t engage in ad hominem attacks.”

Boies suggested that it’s time to draw a line in the sand: “He’s attacked everyone who’s tried to help victims—Paul Cassell and Brad Edwards [Giuffre’s original lawyers], detectives and state law enforcement people.”

And, of course, Dershowitz has not spared Boies, calling him an “extortionist” and “ethically challenged,” according to the New Yorker article. So why not just sue Dershowitz directly, I asked?

“It’s crossed my mind, but I don’t think most people take what he says seriously,” answered Boies. He drew a distinction between his position as public figure and that of someone like Giuffre. “I have access to media, and I can fight it out in public. It’s different for people who don’t have that access. The hurdle for me is different than a victim of sex trafficking, who has to deal with families and neighbors hearing those attacks.”

So is Boies saying he’d never, ever sue Dershowitz?

"I've given serious thought to fight the extortion allegation," said Boies, alluding to Dershowitz's claim that Boies is going after him in order to get money from a much bigger fish: billionaire Leslie Wexner, who was instrumental in building Epstein's wealth. **Dershowitz's theory of being used as a "stalking horse"** (<http://nymag.com/intelligencer/2019/07/alan-dershowitz-jeffrey-epstein-case.html>) in this context is convoluted, though New York Magazine takes a good stab at explaining it.

Boies added: "I'm probably not suing him, but I'm not ruling anything out with that guy."

So is Dershowitz worried that Boies could come after him? In an email, he responded: "Truth is an absolute defense."

I've never known the Harvard professor to give such a brief answer, but I assume he's got his hands full after that scathing New Yorker piece.

Anyway, with the resources of a big firm like Boies Schiller bearing down on him, I asked Dershowitz whether he'd consider settling, or if he's damned determine to get his day in court.

"I will settle only if Roberts admits she never had sex with me," wrote Dershowitz in an email response.

As for rumors that his insurance is running out to cover these claims, especially after the **payout he reportedly made to Giuffre's lawyers** (<https://thecareerist.typepad.com/thecareerist/2016/04/dershowitz-settles-case-involving-allegations-of-sex-with-minor.html>) Cassell and Edwards in the defamation settlement, Dershowitz offered this: "Boies has told people that if he can't beat me in court, he can at least bankrupt me. He won't do either. "

Perhaps not. Yet, you have to wonder where Dershowitz is going with all this. But let me stop here before I add to the pile of analysis, parsing and speculation about what's triggering our favorite Harvard professor.

In the meantime, I'm going to assume my coverage of Dershowitz and Boies ain't finished. Not by a long shot.

Related post: **David Boies Is Not Finished with Jeffrey Epstein** (<https://www.law.com/2019/07/26/david-boies-is-not-finished-with-jeffrey-epstein/>).

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